

# **THE ANNUAL SURVEY OF STATE LAWS IN INDIA**

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**NALSAR UNIVERSITY OF LAW**  
Justice City, Shamirpet,  
Hyderabad, Telangana 500101.

2023

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## Suggested Citation: ASSL (2023)

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# RAJASTHAN

SUBHASHINI SHRIYA\*

## Introduction

Rajasthan is the largest state in the country by area and has the seventh largest population among all Indian states. It has a unicameral legislature consisting of 200 members. The year 2023 witnessed the eighth and final session of the 15<sup>th</sup> legislative assembly under Ashok Gehlot from the Congress and the commencement of the first session of the 16<sup>th</sup> legislative assembly under Bhajan Lal Sharma from the BJP.

Given that the 16<sup>th</sup> legislative assembly only came in at the very end of the year, legislative activity in the year 2023 remained confined to that undertaken by the previous government. This final session was of particular significance in the light of impending state elections at the end of the year. It was the last opportunity for the government to make good on promises made to the electorate in the 2018 elections and to vie for their confidence for the coming term. Expectedly, it saw some of the most important legislations passed in the state in the entire term of this government.

The rising cost of living and slow growth in employment opportunities have been major concerns for residents of the state.<sup>1</sup> The state government tried to address these circumstances with increased social spending and an emphasis on safeguarding economic security. This approach has come under significant fire from different central institutions, particularly the Reserve Bank of India, which has flagged the state as having one of the highest gross fiscal deficit projections among the bigger states in the country.<sup>2</sup>

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<sup>1</sup> Radheshyam Jadhav & Nimisha S Pradeep, *Rajasthan: 'Land of Kings' grapples with financial strain*, November 15, 2023 available at <https://www.thehindubusinessline.com/data-stories/rajasthan-land-of-kings-grapples-with-financial-strain/article67535868.ece> (Last visited on February 22, 2024).

<sup>2</sup> RESERVE BANK OF INDIA, *State Finances : A Study of Budgets of 2023-24*, available at <https://rbi.org.in/Scripts/PublicationsView.aspx?id=22248> (Last visited on February 22, 2024).

Policies and statutes brought in by the Gehlot government remained at the heart of the debate<sup>3</sup> on the distinction between welfare schemes and populism. The Supreme Court seeking a response from the Rajasthan and Madhya Pradesh governments on their welfare policies in the context of a PIL challenging the constitutionality of “freebies” i.e. social welfare schemes by political parties has brought the debate to bear upon defining the boundaries of state legislative powers under Articles 162, 266(3) and 282 of the Constitution.<sup>4</sup>

Leaders of the opposition<sup>5</sup> have defended Rajasthan as positing a different model of development compared to that of the centre. Being one among the few states with a Congress-led government, the laws and policies adopted were also projected as representing the promise and vision espoused by the opposition for the entire country.<sup>6</sup> This claim has also found support from certain sections of civil society,<sup>7</sup> who have observed the state government to be more responsive to public demand in framing laws.

However, slow growth, financial constraints, political infighting and other limitations have shadowed the ambitious law-making in the state. These gaps in policy and practice have kept alive questions on the merits and sustainability of the overall legislative approach taken by the government and whether it can indeed translate into real benefits for the people of the state and for its institutions and administrative systems. It is against this backdrop that this chapter seeks to review the legislative activity of the Rajasthan government through the crucial period of 2023 and gain insights into the possibilities latent in the legislative power of states under the Constitution.

## Quantitative Review

A total of 37 bills were introduced in the Rajasthan Legislative Assembly in the year 2023, and 31 legislations were enacted. One Bill introduced in the year remained pending due to

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<sup>3</sup> Mayuri Gupta, *Freebies Debate Highlights the Limits of Judicial Overreach*, October 11, 2022 available at <https://www.newsclick.in/Freebies-Debate-Highlights-Limits-Judicial-Overreach> (Last visited on February 22, 2024).

<sup>4</sup> Supreme Court Observer, *Freebies in Electoral Democracy and Welfare State*, January 17, 2024, available at <https://www.scobserver.in/cases/freebies-in-electoral-democracy-and-welfare-state/> (Last visited on February 22, 2024).

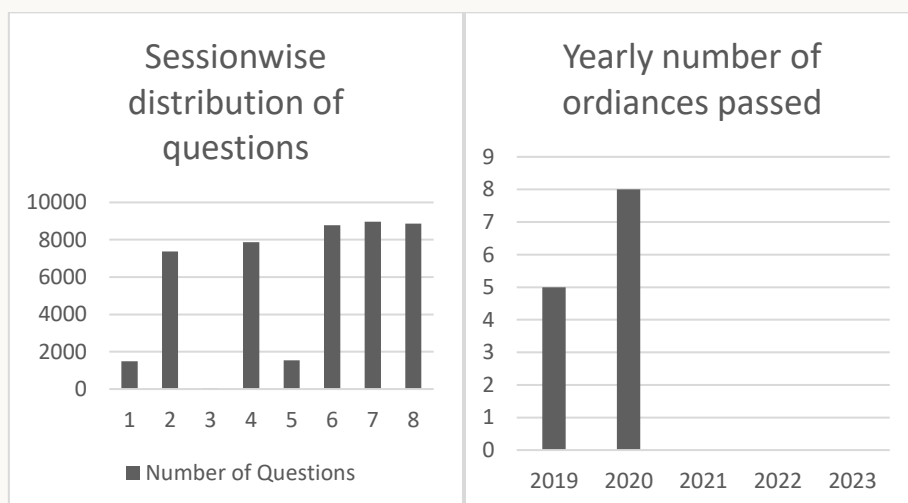
<sup>5</sup> Hamza Khan, *Rahul Gandhi: If BJP wins Rajasthan, it will dismantle welfare net, help billionaires*, November 17, 2023, available at <https://indianexpress.com/article/india/rahul-gandhi-if-bjp-wins-rajasthan-it-will-dismantle-welfare-net-help-billionaires-9029886/> (Last visited on February 22, 2024)

<sup>6</sup> *Ibid.*

<sup>7</sup> Nikhil Dey, Aruna Roy, *Aruna Roy and Nikhil Dey write: Let's separate rights from freebies*, July 14, 2023, available at <https://indianexpress.com/article/opinion/columns/separate-rights-from-freebies-8834778/> (Last visited on February 22, 2024).

the dissolution of the Legislative Assembly.<sup>8</sup> The Assembly did not pass any ordinances in the year, which is consistent with its pattern in the previous two years. This legislative activity took place over a total of 30 sittings in the eighth and final session of the five-year tenure of the Assembly. This is among the highest number of sittings held by the Assembly in any of its previous sessions, barring the seventh Session in 2022, which also saw 30 sittings. Moreover, the number of hours spent in legislative activity was greater than all previous sessions, a total of 215.3 hours including the 5.7 hours<sup>9</sup> for which the house remained adjourned.

Nearly 60% of the bills were passed after being considered for five or more days, 33% of the bills were passed between two to five days and only 7% of the bills were passed within a day of being introduced. The budget was discussed over 12 days.<sup>10</sup> The 16<sup>th</sup> legislative assembly had 25 Committees, out of which 23 were standing committees. The house saw significant engagement on the floor with MLAs raising a total of 8871 questions in the house, despite the rules of procedure of the assembly allowing members to only ask a limited number of questions.<sup>11</sup>



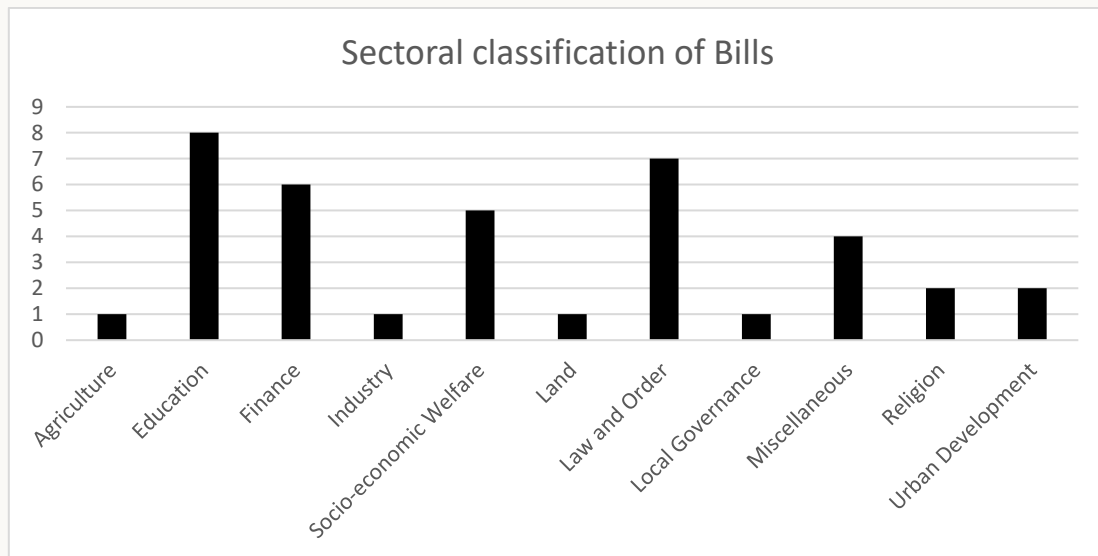
<sup>8</sup> Rajasthan Legislative Assembly, *Bills & Acts*, available at <https://assembly.rajasthan.gov.in/Containers/Legislation/GovernmentBills.aspx> (Last visited on February 22, 2024).

<sup>9</sup> PRS Legislative Research, *15th Rajasthan Legislative Assembly (2018-Present)*, available at <https://prsindia.org/legislatures/states/15th-rajasthan-legislative-assembly-2018-present> (Last visited on February 22, 2024).

<sup>10</sup> PRS Legislative Research, *Vital Stats Functioning of Legislative Assemblies of Chhattisgarh, Madhya Pradesh, Mizoram, Rajasthan and Telangana*, available at <https://prsindia.org/legislatures/state/vital-stats/functioning-of-legislative-assemblies-of-chhattisgarh-madhya-pradesh-mizoram-rajasthan-and-telangana> (Last visited on February 22, 2024).

<sup>11</sup> Rajasthan Legislative Assembly, *सत्रवार सूचीबद्ध असूचीबद्ध प्रश्न*, available at <https://rlaoasys.rajasthan.gov.in/QuestionsWeb/SessionWise.aspx> (Last visited on February 22, 2024).

Among all the bills introduced, education was the subject of the greatest number of legislations, with eight bills in this sector. This was followed by the subject of law and order with seven bills, six bills related to finance, taxation and appropriation put together and five important bills were on socio-economic welfare.



## Qualitative Assessment of State Legislations

### Socio-Economic Welfare on Top of the State Legislative Agenda

Law-making activity in this period in the state appears most remarkable for pioneering a host of unprecedented legislative initiatives in the domain of socio-economic welfare. The state came up with many 'firsts' in the year 2023, including the first laws providing a minimum guaranteed income and social pension and universal healthcare as rights, and the first legislation specifically addressing gig and platform-based workers and their aggregators.

Besides being distinguished by their pioneering nature, these legislations are important in establishing social security as a right which is justiciable and rooted in the fundamental rights enshrined in the Constitution. This not only makes such entitlements far more secure than scheme-based doles but also offers a different governmental paradigm to address the increasing economic inequality and insecurity faced by a significant portion of the poor in the country today. However, a rights-based approach has become increasingly marginalised in the dominant global policy framework today. In fact, such an approach might not only falter at the level of implementation due to weak institutions but also contradict certain

international treaty obligations that the country has committed to in the past.<sup>12</sup> At the same time, the positive impact of such legislation on the sense of entitlement and political agency of common citizens may not be directly correlated to and limited by the ground realities of implementation. These can (and have) become opportunities for popular organising and consequent deepening of democracy.<sup>13</sup> Such charting of fresh ground also gives a state legislature the advantage of so framing the legal discourse around an issue which could impact future law-making on the subject.

Keeping in view the above socio-political context, three important acts shall be analysed here. These are the Rajasthan Right to Health Act, 2022, the Rajasthan Minimum Guaranteed Income Act, 2023, and the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023.

### ***The Rajasthan Right to Health Act, 2022<sup>14</sup>***

Introduced in the assembly in 2022, the Rajasthan Right to Health Act, 2022 was enacted in April 2023 after receiving assent from the governor, becoming one of the most important laws to come into force in the year. The legislation is a big step in the direction of extending health coverage for residents of the state, given that Rajasthan ranked 16<sup>th</sup> among 19 major states in the country with respect to the health of its residents in a 2021 report of the Niti Aayog.<sup>15</sup> The Act seeks to provide equity in access to healthcare and wellbeing as mandated under Article 47 and the right to health, which has come to be recognised as an important dimension of the right to life as guaranteed under Article 21 of the Constitution. Public health is a state subject covered by the Constitution of India, 1950, Schedule VII, List II, *State List*, Item 6 (Public health and sanitation; hospitals and dispensaries).

The Act frames the right to health as an “inclusive right extending not only to timely health care but also to underlying socio-economic, cultural and environmental” conditions of life.<sup>16</sup> The law lends recognition to the iniquitous nature of access to healthcare in the state and

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<sup>12</sup> For a deliberation of these commitments see Hirsch Moshe, Ashok Kotwal and Bharat Ramaswami, *Introduction: India and a Human Rights Based Approach to Economic Development* in *A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT IN INDIA* (Moshe Hirsch, Ashok Kotwal et al, 2019).

<sup>13</sup> G. Sampath, *Decoding Rajasthan’s Right to Minimum Guaranteed Income Bill, 2023 | In Focus podcast*, July 28, 2023, available at <https://www.thehindu.com/podcast/decoding-rajasthans-right-to-minimum-guaranteed-income-bill/article67132559.ece> (Last visited on February 22, 2024).

<sup>14</sup> The Act was introduced in the Assembly in 2022 but was assented by the Governor on 11th April 2023 and it was numbered as Act No 7 of 2023. However unlike the Nagaland Assembly its short title remained the Rajasthan Right to Health Act 2022. [Ed.]

<sup>15</sup> The World Bank, NITI Aayog and Ministry of Health & Family Welfare, *Healthy States Progressive India report on the Ranks of State and Union Territories*, [https://www.niti.gov.in/sites/default/files/2021-12/NITI-WB\\_Health\\_Index\\_Report\\_24-12-21.pdf](https://www.niti.gov.in/sites/default/files/2021-12/NITI-WB_Health_Index_Report_24-12-21.pdf) (Last visited on February 22, 2024).

<sup>16</sup> The Rajasthan Right to Health Act, 2022

sets forth a Rajasthan Model of Public Health by imposing certain obligations on the state to ensure guaranteed delivery of affordable and quality healthcare for the public. Most importantly, the Act adopts a multidimensional definition of health care, addressing “testing, treatment, care, procedures” along with “preventative, promotive, therapeutic, diagnostic, nursing, rehabilitative, palliative, convalescent, research” dimensions. It also includes reproductive health care and care for conditions emerging due to participation in medical research. The Act comprehensively enumerates guaranteed rights, including the right to be adequately informed, avail free health services from public healthcare institutions and emergency treatment from any health care provider (including private institutions) without conditionalities such as prepayment and police clearance, the right to freedom from discrimination during treatment and so on. Lastly, the Act strengthens mechanisms for the State government to respond to public health emergencies, a point of major concern given the recent experience of the state’s incapacity to adequately deal with the Covid-19 epidemic.

The obligations on the State government include making appropriate budgetary provisions for the implementation of the Act; to institutionalise a Human Resource Policy for health, ensuring availability of medical personnel and infrastructure, facilitating availability of safe and nutritionally adequate food, water, sanitation and public education on issues of health. The Act also provides for the formulation of a time-bound Grievance Redressal Mechanism for any grievance with regard to access to healthcare services and proposes a penalty of up to Rs. 25,000 for contravention of any of its provisions.

The electoral promise of guaranteed healthcare traversed a long path before finally being enacted as a statute. A draft law was formulated by the Rajasthan chapter of the Jan Swasthya Abhiyan in 2019, which was sent to a special committee constituted by the state for fine-tuning.<sup>17</sup> The draft submitted by the committee was a much-pruned version of the original, which emphasised on local community participation and distance-bound availability of services among other things. Even this revised draft was further toned down and published by the government for comments, eliciting contrary reactions – civil society organisations and healthcare activists demanding strengthened grievance redressal and clearer budgetary commitments on one hand, and doctors’ associations opposing the bill on the other.

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<sup>17</sup> Dr. Narendra Gupta, *Rajasthan Right to Health Care Act, 2023: What it entails and how we got there*, April 24, 2023, available at <https://www.newslick.in/rajasthan-right-health-care-act-2023-what-it-entails-and-how-we-got-there> (Last visited on February 22, 2024).

The Indian Medical Association, Jaipur and other private actors raised objections about there being no provision for reimbursement of private healthcare institutions for providing free healthcare in emergencies. This was expected to undermine the interests of private healthcare institutions.<sup>18</sup> Other critics considered the same a violation of the Constitution of India, 1950, Article 19(1)(g).<sup>19</sup> The objections resulted in a state-wide strike by private medical practitioners lasting over two weeks. The draft was then referred to a Select Committee of 16 MLAs from different political parties. Lastly, a Memorandum of Understanding was arrived at with different associations of healthcare providers and institutions where the Government conceded to most of their demands and agreed to exclude private hospitals with less than 50 beds and those with no history of government aid from the obligation to provide free emergency treatments. This practically excluded all but 47 of the 4100 private healthcare institutions operating in the state from the ambit of the new law.<sup>20</sup>

Even after the final enactment, the law will face the test of effective implementation. A lack of clarity on the source of financing for such a massive social welfare obligation has been a point of contention, considering that Rajasthan already has a higher budget allocation for health, 7.4% of its overall budget, compared to the countrywide average of 6%. The paucity of human resources to address the expanded public healthcare infrastructure envisaged by the Act is another challenge for its effective implementation. These are serious questions on the practical viability of the Act which will need to be answered before the statute and others in its genre can establish themselves as truly progressive legislative action and not just a pre-election illusion to sway public opinion.

### ***The Rajasthan Minimum Guaranteed Income Act, 2023***

Another extremely important piece of legislation passed by the Rajasthan State Assembly this year has been the Rajasthan Minimum Guaranteed Income Act, 2023. It provides for three categories of economic security, i.e. the right to guaranteed employment for every adult citizen, the right to a weekly unemployment allowance if employment is not provided,

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<sup>18</sup> TNN, *Govt forms select panel to finalise Right to Health Bill*, January 18, 2023, available at <https://timesofindia.indiatimes.com/city/jaipur/govt-forms-select-panel-to-finalise-right-to-health-bill/articleshow/97077054.cms> (Last visited on February 22, 2024).

<sup>19</sup> PRS Legislative Research, *State Legislative Brief Rajasthan*, available at [https://prsindia.org/files/bills\\_acts/bills\\_states/rajasthan/2022/State%20Legislative%20Brief%20\\_Rajasthan%20Right%20to%20Health.pdf](https://prsindia.org/files/bills_acts/bills_states/rajasthan/2022/State%20Legislative%20Brief%20_Rajasthan%20Right%20to%20Health.pdf) (Last visited on February 22, 2024).

<sup>20</sup> Viveka Roychowdhury, *Is Rajasthan's RTH Bill the right template for India?* April 7, 2023, available at <https://www.expresshealthcare.in/news/is-rajasthans-rth-bill-the-right-template-for-india/438756/> (Last visited on February 22, 2024).

along with the right to social security pension for the elderly, disabled, widows and single women. Employment has to be provided within 15 days of application.

The Act covers all residents of the state, unlike most cash transfer schemes. It widens the employment entitlement under MNREGA from 100 to 125 days for rural areas and introduces a similar employment guarantee of 125 days in urban areas through the Indira Gandhi Shahri Rozgar Guarantee Yojana. The payment of minimum wages has been affixed on a weekly or fortnightly basis. Each job card holder will be entitled to employment within a radius of five kilometres from their residence.

It is the first law in the country to institute universal social pension as a legal entitlement instead of a simple cash transfer policy. The declaration of a pension of Rs. 1000 effectively doubles the existing pension available in the state and has fairly extensive coverage of just under 1 crore beneficiaries. The act also provides for an automatic increase in the pension by 15% every year, which is a little more than direct indexation with inflation. These are significant advances compared to the pension provided through the centrally sponsored National Social Assistance Program, which has remained stagnant at Rs. 200 a month since 2007 without any indexation, and only covers BPL families.<sup>21</sup>The state government had piloted the idea in 2022 under the Indira Gandhi Urban Employment Guarantee Scheme, providing 100 workdays to the urban unemployed.

It should be noted here that the law provides a *minimum guaranteed income* and not a minimum income guarantee or a basic income. The essential difference lies in the quantum of income ensured to citizens under the two concepts. The idea of a 'minimum income guarantee' or a 'basic income' entitles beneficiaries to an income that is sufficient for subsistence, calculated on the basis of a minimum standard of consumption. In some cases, it can also be an instrument for more equitable distribution of national wealth, such as in Alaska (redistributing oil and mineral revenues). On the other hand, a 'minimum guaranteed income,' such as provided for under the present Act, seeks to supplement income from other sources and is not in itself sufficient to support subsistence.

### ***The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023***

Rajasthan has been the first state legislature to introduce a separate bill providing social benefits for gig workers. The Act provides for the registration of platform-based gig workers and aggregators (digital intermediaries between buyers and sellers of goods and services)

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<sup>21</sup> G. Sampath, *Decoding Rajasthan's Right to Minimum Guaranteed Income Bill, 2023* | *In Focus* podcast, July 28, 2023, available at <https://www.thehindu.com/podcast/decoding-rajasthans-right-to-minimum-guaranteed-income-bill/article67132559.ece> (Last visited on February 22, 2024).

and deduction of a welfare fee from aggregators towards the welfare of registered gig workers. This fee is to be deducted as a cess on each digital transaction made on an aggregator platform which puts gig labour into motion. The percentage of value of each transaction to be charged from the aggregator has been left to be determined by the State government. The Central Transaction Information and Management System (CTIMS) will digitally record each transaction related to platform-based gig workers. The Rajasthan Platform Based Gig Workers Social Security and Welfare Fund shall hold a corpus constituted by the welfare fee from aggregators, grants-in-aid received from the State government and other funds and be used to provide social security for gig workers. The Rajasthan Platform Based Gig Workers Welfare Board will monitor the implementation of the Act. The Board is also tasked with providing “pro-active facilitation” to gig workers in their “engagement with concerned aggregator,” ensure protection of rights, ensure time bound redressal of grievances related to the rights of platform-based gig workers, engage with registered unions working with platform-based gig workers and hold regular open consultations with them.

Despite its many positive provisions, the Act explicitly leaves industry out of the regulation which has led trade unionists involved in the consultation process to see it as a breakthrough but not a model.<sup>22</sup> Nevertheless, the law is an important step towards introducing corporate accountability in the gig industry which has so far managed to evade all statutory responsibility towards its workers, more or less excusing itself from the domain of labour law as such. The law itself does not directly address the question of wages or recognise an employer-employee relationship<sup>23</sup> but it does give workers a platform to talk to representatives of aggregators at the industry level enabling the beginning of collective bargaining in a sense. The CTIMS proposed in the Act paves the way to increasing transparency in the sector by collecting all transactional data which can then be used to reveal the exact relation between workers and aggregators in terms of work hours, value added, profits accrued and so on. It thus creates a basis for formulating more developed demands for legislative protections in the future such as for a minimum wage within the gig work setup, and establishing an employer-employee relationship among other things. The law has also introduced a grievance redressal mechanism in the industry for the first time, the absence of which has been a serious problem for workers so far. The Act also has a

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<sup>22</sup> *How did gig workers in Rajasthan get their right to social security? with Nikhil Dey Part 2*, August 20, 2023, available at <https://www.youtube.com/watch?v=oYXISNmMPSI> (Last visited on February 22, 2024).

<sup>23</sup> Sunny Jose, Indu Poornima and P Raghupathi, *Gig Workers Bill: reading between the lines*, August 30, 2023, available at <https://www.thehindu.com/opinion/op-ed/gig-workers-bill-reading-between-the-lines/article67248229.ece> (Last visited on February 22, 2024).

savings clause providing for it to be in addition to and not in derogation of any other law in force, therefore it shall add to the safety net anticipated in the Code on Social Security and strengthen the framework proposed by the union government.

The law-making process here is also both interesting and insightful of how a federal legislative system can allow for marginal voices and ideas to enrich the legal framework for the entire country. Much before the idea of such a law came up, different unions and social organisations had been in conversation with the state government over a policy framework for gig workers. However, the concept of a transaction-based levy was first floated during the Bharat Jodo Yatra consultations in December 2022<sup>24</sup> and the Chief Minister's promise of making such a law only followed later. A process of consultation ensued where drafts were submitted to the state government by platforms of unorganised workers. A collective consultation was held, bringing representatives from various aggregators and workers unions and social organisations together before officials of the State.<sup>25</sup>

Besides the above three laws, the state also enacted the Rajasthan State Farmers Debt Relief Commission Act, 2023 for giving financial relief to indebted farmers. The Act sets up the Rajasthan State Farmers Debt Relief Commission which has the power to declare an area or any crops and farmers engaged in cultivating such an area or such a crop as distress affected. It can then fix a fair rate of interest for their non-institutional credit, undertake conciliation efforts between creditors and indebted farmers, change the period of loan repayment and suggest a one-time settlement of agriculture loans under certain conditions among other things.

## **Towards an Increasingly Stringent Law and Order Regime**

The establishment of a more stringent law and order regime was the other subject that witnessed the most significant legislative interventions in the state. The Rajasthan Control of Organised Crime Act, 2023, the Rajasthan Prevention of Anti-Social Activities (Amendment) Bill, 2023 and the Rajasthan Prisons Act, 2023 are the most important among the seven laws introduced to strengthen the arms of the criminal justice system. This legislative preoccupation with law and order must be read in the context of the opposition

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<sup>24</sup> Hamza Khan, *Rajasthan tables Bill to guarantee social security to gig workers*, July 22, 2023, available at <https://indianexpress.com/article/cities/jaipur/rajasthan-tables-bill-guarantee-social-security-gig-workers-8853922/> (Last visited on February 22, 2024).

<sup>25</sup> *How did gig workers in Rajasthan get their right to social security? with Nikhil Dey Part 2*, August 20, 2023, available at <https://www.youtube.com/watch?v=oYXISNmMPSI> (Last visited on February 22, 2024).

alleging a deteriorating law and order situation in the state, especially with respect to violence against women, incidents of trafficking, paper leaks and corruption.<sup>26</sup>

### ***The Rajasthan Prevention of Anti-Social Activities (Amendment) Bill, 2023***

The Rajasthan Prevention of Anti-Social Activities (Amendment) Bill, 2023 seeks to remedy the situation created after a Rajasthan High Court order from March 2017 nullified a 2011 state government notification conferring powers of the District Magistrate under the Rajasthan Prevention of Anti-Social Activities (Amendment) Act, 2006 onto the Commissioner of Police in a metropolitan area. The Act now allows a Commissioner of Police to authorise the preventive detention of a person apprehended to be a threat to public order. This authority had previously been limited to the state government and the District Magistrates under the Rajasthan Prevention of Anti-Social Activities Act, 2006. The principal Act sought to “provide for the preventive detention of boot-leggers, dangerous persons, drug offenders, immoral traffickers and property grabbers.”<sup>27</sup> *Statement of Object & Reasons* of The Rajasthan Prevention of Anti-Social Activities (Amendment) Bill, 2023 rationalises the expansion of authorisation under the Act on the grounds of a severe increase in crime rates due to the rapid growth taking place in the state.

The experience and apprehension of the misuse and overuse<sup>28</sup> of preventive detention laws have been widely documented. It has specifically been argued that overextension of the scope of such laws have led to the same being used as a substitute for ordinary law where conviction is difficult to obtain from regular criminal courts.<sup>29</sup> Further, practices such as identifying habitual offenders within the jurisdiction of police stations and taking preventive action against them<sup>30</sup> can set off a dangerous process of criminalising and victimising groups and communities without adequate cause of action and strengthen social prejudices.

### ***The Rajasthan Control of Organised Crime Bill, 2023***

The Rajasthan Legislative Assembly joined the ranks of Maharashtra, Karnataka and Gujarat in passing a law specific to the control of organised crime. The Bill however, did not receive

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<sup>26</sup> Rajan Mahan, *Rajasthan: BJP zeroes in on law and order as Gehlot's Achilles' Heel*, July 24, 2023 available at <https://www.moneycontrol.com/news/assembly-elections/rajasthan/rajasthan-bjp-zeroes-in-on-law-and-order-as-ashok-gehlots-achilles-heel-11015521.html> (Last visited on February 22, 2024).

<sup>27</sup> Rajasthan Prevention of Anti-Social Activities Act, 2006

<sup>28</sup> Neha Singhal, *Preventive Detention Laws in India*, 12 *Journal of Indian Law and Society* 51(2021).

<sup>29</sup> Neha Singhal, *Scoping Study on Preventive Detention Laws in India*, available at [https://www.thakur-foundation.org/upload/judgements/1649664237\\_Neha%20Singhal,%20Scoping%20Study%20on%20Preventive%20Detention%20Laws.pdf](https://www.thakur-foundation.org/upload/judgements/1649664237_Neha%20Singhal,%20Scoping%20Study%20on%20Preventive%20Detention%20Laws.pdf) (Last visited on February 22, 2024).

<sup>30</sup> PTI, *Rajasthan CM Gehlot says efforts to be made to set up fast-track courts*, September 03, 2023, available at <https://www.deccanherald.com/india/rajasthan/rajasthan-cm-gehlot-says-efforts-to-be-made-to-set-up-fast-track-courts-2671264> (Last visited on February 22, 2024).

the Governor's assent and was not enacted. The Rajasthan Control of Organised Crime Bill, 2023 provides for extremely stringent punishments; capital punishment or imprisonment for life and a minimum fine of one lac rupees where an offence leads to death and a sentence of a minimum of five years extending to life imprisonment and a minimum fine of five lac rupees in any other case. Any attempt, conspiracy, abetment of organised crime, being a member of an organised crime syndicate or sheltering such a member is punishable with a minimum of five years imprisonment extending to life sentence and a minimum fine of five lakh rupees. Offences under the Act can only be tried by a special court provided for in the statute.

The Bill departs from the Code of Criminal Procedure, 1973 in many respects. Most importantly it removes various protections provided to an accused in criminal trials and significantly undercuts the right to bail, limiting it only to cases where the court reasonably believes the accused to be innocent and altogether bars the provision for anticipatory bail. It overwrites The Indian Evidence Act, 1872, section 25 and 101 making confessions made to police officers admissible in court and placing the burden of proof on the accused. The deadline for filing the chargesheet can be extended to 180 days. The law also authorises interception of communication and admits it as evidence with conditions less stringent than the Indian Telegraph Act, 1885. Under section 10 of the Act, trial by special courts are afforded precedence over trial in any other case which can lead to undue delay in justice being delivered in such other cases. The present law is closely modelled on the Maharashtra Control of Organised Crime Act, 1999. In proceeding thus, the state legislature has not considered that a provision analogous to Sec 21(5) of the MCOCA has been retained as Section 21(5) of the present Bill despite being struck down by the Supreme Court in 2008.<sup>31</sup> This provision pertains to the denial of bail to an accused arrested under the Act, if he was already on bail for a crime under the same Act, or any other Act. The Supreme Court upheld the decision of the Bombay High Court to strike down the words 'any other Act' as violative of Articles 14 and 21 of the Constitution.

The need and effectiveness of exceptional laws have been questioned from many quarters, with legal experts holding that their objectives can be realised through the regular criminal law framework itself, if used properly. It has also been widely acknowledged by state authorities that the MCOCA and similar laws are slapped liberally on convicts to make it difficult for them to obtain bail. The law extended to Delhi in 2002 has only seen two

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<sup>31</sup> State of Maharashtra vs Bharat Shanti Lal Shah & Ors. (2008) 13 SCC 5.

convictions in all these years.<sup>32</sup> While the significance of maintaining law and order is beyond question, whether the same can be achieved through stricter penal provisions has been a point of debate where the benefits have been found to outweigh the costs under certain circumstances.<sup>33</sup> Especially where provisions for enforcement are weak and prone to corruption, such provisions have been found to compromise on human rights, constitutional safeguards on liberty and the right to protest in the name of maintaining law and order.

### ***The Honour of Dead Body Act, 2023***

This Act was passed by the Rajasthan legislative assembly to curb incidents of relatives of victims protesting with dead bodies. The Act provides for imprisonment up to five years for anyone protesting with a dead body at a public place, like a police station or the streets and makes it mandatory for families to perform the last rights of a deceased at the earliest among other provisions. The law was brought in to address a nearly fourfold increase in the incidence of relatives protesting with dead bodies, demanding jobs or compensation since 2018.<sup>34</sup> The government also passed The Rajasthan Public Examination (Measures for Prevention of Unfair Means in Recruitment) (Amendment) Act, 2023 providing for life imprisonment for those involved in paper leaks of government examinations. The effectiveness of extending the punishment for paper leaks has been questioned on grounds of severe corruption within the state government.<sup>35</sup> Both these laws seem to be countering the symptoms rather than the malady.

### ***The Rajasthan Prisons Bill, 2023***

Prisons in Rajasthan have been governed by two colonial legislations, the Prisons Act, 1894 and the Rajasthan Prisoners Act, 1960 modelled on the Prisoners Act, 1900. The 15<sup>th</sup> state legislature sought to make a “comprehensive legislation” on the matter and strengthen reformatory provisions and entitlement to human rights for inmates through the passage of the Rajasthan Prisons Bill, 2023.

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<sup>32</sup> Raj Shekhar, *Sticky wicket: 10 yrs, just 2 convictions under MCOCA*, August 26, 2023, available at <https://timesofindia.indiatimes.com/city/delhi/sticky-wicket-10-yrs-just-2-convictions-under-mcoca/articleshow/103076378.cms> (Last visited on February 22, 2024).

<sup>33</sup> Steven Raphael and Michael Stoll, *Introduction* in *DO PRISONS MAKE US SAFER?* (2009).

<sup>34</sup> India News, *Rajasthan Passes Honour Of Dead Body Bill, 2023: Explained*, July 22, 2023, available at <https://www.ndtv.com/india-news/rajasthan-passes-honour-of-dead-body-bill-2023-explained-4231263#:~:text=The%20bill%20seeks%20to%20openalise,dignity%20of%20the%20deceased%27s%20body.> (Last visited on February 22, 2024).

<sup>35</sup> The Hindu Bureau, *Row in Rajasthan Assembly as Bill increasing jail time for paper leak is introduced*, July 20, 2023, available at <https://www.thehindu.com/news/national/other-states/row-in-rajasthan-assembly-as-bill-increasing-jail-time-for-paper-leak-is-introduced/article67098195.ece> (Last visited on February 22, 2024).

The Bill marks a definite development from the previous statutory framework, providing for a system of segregating prisoners according to gender, nature of offence, stage of trial and conviction, among other things. There is a separate elaboration of the rights and duties of prisoners, a component only found in the relevant Kerala<sup>36</sup> and West Bengal<sup>37</sup> legislations and extends it to include the right to meaningful and gainful employment for all prisoners at equitable wages. It further provides for a grievance redressal committee for prisoners, which has been a feature of only a few state prison legislations such as Kerala and Delhi.<sup>38</sup> The Bill also sets up an administrative structure for implementation through the constitution of a State Advisory Board for prisons and a Board of Skill Development Programmes and Vocational training for prisoners.

An overhaul of the legislative framework around prisons has been on the cards for a while for both state governments as well as the centre. Certain states such as Kerala, West Bengal and Delhi have passed prison and correctional service laws but a large part of the drive to reform has remained outside of statutory provisions. The need for a fresh statutory framework became more urgent over the past years with a rise in killings, criminal activity and gang violence within prisons.<sup>39</sup> The prison system is state subject covered by the Constitution of India, 1950, Schedule VII, List II, *State List*, Item 4 (Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions). However, it is important to note that despite it being the legislative domain solely of state governments, there has been only limited legislative reform introduced through state assemblies, and the central government has consistently engaged in advising state governments in the administration of prisons.<sup>40</sup>

While concluding this discussion, it would be useful to keep in mind that the central government also came out with the Model Prisons and Correctional Services Act, 2023, prepared by the Bureau of Police Research and Development, in consultation with state prison authorities and correctional experts, among others.<sup>41</sup> While a detailed discussion of the Act is beyond the scope of this chapter, a comparative assessment of the state

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<sup>36</sup> Kerala Prisons and Correctional Services (Management) Act, 2010

<sup>37</sup> West Bengal Correctional Services Act, 1992

<sup>38</sup> Delhi Prisons Act, 2000

<sup>39</sup> Khadija Khan, *What is the Model Prisons Act announced by the MHA?* May 26, 2023, available at <https://indianexpress.com/article/explained/explained-law/model-prisons-act-mha-8630225/> (Last visited on February 22, 2024).

<sup>40</sup> Press Release, PRESS INFORMATION BUREAU GOVERNMENT OF INDIA, May 12, 2023, available at <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1923682> (Last visited on February 22, 2024).

<sup>41</sup> *Id.*

legislation and the central model Act reveals the greater scope and depth of the reforms suggested by the Model Prisons and Correctional Services Act, 2023 reflecting the advantage enjoyed by the central government to be able to effect a paradigmatic shift in the overall legislative framework in a domain as complex as prison governance and reformative justice, despite it being a state subject.

### **Some Crucial Domains Left Wanting**

The lack of legislation with regard to industry and the service sector is notable in the year given that economic growth has been sluggish and the service sector saw a downturn in growth over the last five years.<sup>42</sup> The only legislation in this regard has been the Rajasthan Micro, Small And Medium Enterprises (Facilitation Of Establishment And Operation) (Amendment) Act, 2023 which extended the period of exemption for getting various approvals for MSMEs from three years to five years to neutralise the effect of the Corona period where very few industries were able to avail of the benefits provided under the Rajasthan Micro, Small And Medium Enterprises (Facilitation Of Establishment And Operation) Act, 2019. The other legislation which can have a positive impact on industry is The Rajasthan Tenancy (Amendment) Act, 2023 which allows any entity setting up a renewable energy power plant to exchange any adjacent parcel of land in its possession as a tenant with any government land within the precincts of the power plant subject to certain conditions. This can encourage the renewable energy sector that has been consistently marked by the state for further exploration. The same is also in line with the Rajasthan Renewable Energy Policy, 2023.<sup>43</sup>

The legislative activity in the domain of education pertained primarily to the establishment of new educational institutions. The Rajasthan Coaching Institute (Control and Regulation) Bill 2023 was an important bill in this regard which the government had drafted<sup>44</sup> with the intention to introduce but which could not be tabled in the house. If passed, the bill would have been an important and pioneering statutory intervention strengthening accountability of the coaching sector in the light of the rising number of suicides among students aspiring to crack competitive exams, especially in the coaching hub of Kota in the state. While the bill could not be tabled in Rajasthan a similar bill has been proposed by the Haryana

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<sup>42</sup> Radheshyam Jadhav & Nimisha S Pradeep, *Rajasthan: 'Land of Kings' grapples with financial strain*, November 15, 2023 available at <https://www.thehindubusinessline.com/data-stories/rajasthan-land-of-kings-grapples-with-financial-strain/article67535868.ece> (Last visited on February 22, 2024).

<sup>43</sup> Rajasthan Renewable Energy Policy, 2023

<sup>44</sup> The Rajasthan Coaching Institute (Control and Regulation) Bill 2023.

government and another by the union government in addition to existing rules and regulations for the sector.

## **Conclusion**

The legislative activity of the Rajasthan assembly in the year 2023 presents a mixed bag of observations. The laws on social and economic welfare have been exemplary in charting fresh ground and presenting certain definitive answers to important issues confronting the country today, such as increasing economic inequality and falling access to basic services such as healthcare and social security. However, those answers have remained partial, and the remedies presented by the laws ameliorative at best. At the same time, many important legislations passed were either not enacted or have not been implemented due to non-framing of Rules. These include the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 and the Rajasthan Right to Health Act, 2022. On the whole the legislative activity of the state demonstrates how the law-making power given to state governments can create the space for reflecting public opinions and concerns even when they are marginal in the dominant policy discourse.